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District Technical Coordinator
St. Paul District

Assistant Chief Counsel (Income Tax & Accounting)
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National Office

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Technical Coordination Report Submitted by:
Darren Lefebvre
St. Paul District

Recommending: Legislation to allow an assessment of the civil fraud penalty to include fraudulently claimed prepaid credits.

Mr. Lefebvre states that in some cases a taxpayer has altered the Form W-2 attached to the income tax return to show more withholding than actually occurred. In addition, the taxpayer might have also filed false Forms W-4 to minimize or eliminate any actual withholding. However, there is no deficiency in the amount of tax shown on the return.

Mr. Lefebvre recommends that legislation be enacted to expand the coverage of the civil fraud penalty in section 6663 of the Internal Revenue Code to the filing of a fraudulent claim for refund.

The fraud penalty under section 6663 of the Code is, in general, based on the difference between the correct tax liability and the amount shown as the tax on the taxpayer's return. The recently proposed regulations under section 6664 of the Code define the amount shown as the tax on the taxpayer's return. The regulation provides that the amount shown as the tax is reduced by the excess of the amount shown as a credit for tax withheld over the amount actually withheld. Section 1.6664-2(c)(1) of the proposed Income Tax Regulations. 1991-13 I.R.B. 24, 38. Accordingly, the amount shown as tax on a return would not include the amount of overstated withholdings and the penalty would be applied to the resulting underpayment of tax. The definition will not be effective before the publication of the final regulations in the federal register.

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